

SUBCHAPTER A—GENERAL PROVISIONS

PART 1502—AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1441a(a) (2) and (13).

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§ 1502.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued by the Thrift Depositor Protection Oversight Board (Board) pursuant to 5 U.S.C. 552 and 12 U.S.C. 1441a(a) (2) and (13).

(b) *Purpose*. This part sets forth the kinds of information made available to the public and the rules and procedures for obtaining documents and records of the Board.

(c) *Scope*. This part applies to the information and records of the Board, an instrumentality of the United States separate and distinct from the Resolution Trust Corporation (RTC); and this part does not govern or set forth procedures for the implementation of the Freedom of Information Act by the RTC. This part explains:

(1) The kinds of information which the Board is required to publish in the FEDERAL REGISTER;

(2) The kinds of records made available to the public on request;

(3) The kinds of information made exempt from disclosure;

(4) The procedures for obtaining records and for processing requests;

(5) The schedule of fees for processing requests; and

(6) The procedures for appealing denials of requests for information.

§ 1502.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(b) *Appeal* means the administrative appeal by a requester of an adverse initial determination on a request for records, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(c) *Business information* means trade secrets and commercial or financial information provided to the Board that arguably is exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(d) *Denial* means a denial, based upon an exemption of the Freedom of Information Act, of a request for records, or a denial of a fee waiver request.

(e) *Director* means the Board's Vice President for Public Affairs or, in case of the absence or a vacancy in the office of the Vice President, the head or acting head of the Board's Office of Public Affairs.

(f) *President* means the President of the Board.

(g) *Request*, except for the purposes of § 1502.10, means any request for Board records made pursuant to 5 U.S.C. 552(a)(3).

(h) *Requester*, except for the purposes of § 1502.10, means any person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(3).

(i) *Submitter* means any person or entity that provides business information to the Board.

§ 1502.3 Published information.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraph (b) of this section, pursuant to 5 U.S.C. 552(a)(1) the Board shall separately state and currently publish in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which such forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of the foregoing.

(b) Except to the extent that a person has actual and timely notice of the terms thereof, such person is not required in any matter to resort to, or be adversely affected by, a matter required to be published pursuant to paragraph (a) of this section and not so published. For the purposes of this section, matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when it is incorporated by reference therein with the approval of the Director of the Federal Register.

§ 1502.4 Public inspection and copying.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraphs (b), (d), and (e) of this section, the Board shall make available for public inspection or copying:

(1) Final opinions of the Board, including concurring and dissenting opinions, as well as orders of the Board, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Board and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions of the Board to staff that affect a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case, however, the justification for the deletion shall be explained in writing.

The Director is authorized to act for the Board in implementing this paragraph.

(c) The Board shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated and required by this section to be made available or published. The Board shall provide copies of such an index on request at a cost not to exceed the direct cost of duplication.

(d) A final order, opinion, statement of policy, interpretation, or staff manual or instruction described in paragraph (a) of this section that affects a member of the public may be relied on, used, or cited as precedent by the Board against a party other than an agency only if such document has been indexed and made available pursuant to this section or the party has actual and timely notice of the terms of the document.

(e) Applications to inspect or copy records of the Board that are made available in accordance with paragraphs (a) and (c) of this section shall be made to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232.

§ 1502.5 Specific requests for records.

(a) Except with respect to the records made available pursuant to § 1502.3 and § 1502.4, and subject to the application of the exemptions in § 1502.11, the Board, upon any request for records that reasonably describes such records and complies with this part, shall make such records promptly available to any person.

(b) Records exempt from disclosure to the public pursuant to 5 U.S.C. 552(b), as described in § 1502.11, may be released if the President or the Board's General Counsel determines that disclosure is in the public interest, provided that such disclosure is not prohibited by statute, regulation, or order.

§ 1502.6 Request procedures.

(a) *Written requests.* Except as provided in paragraph (d) of this section, each request for Board records shall be made in writing, signed by or on behalf of the person making the request, and

state that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this part. Requests shall be submitted to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232. The Director is authorized to act for the Board under this section.

(b) *Description of records and form of request.* (1) Each request for records must describe the records sought in reasonably sufficient detail to enable a Board employee who is familiar with the subject matter to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of the Board's operations. Whenever possible, a request should include specific information about each record sought, such as the date, title, name, author, recipients, and subject matter of the record. If a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is insufficient. The requester shall also be given an opportunity to confer with Board staff with the objective of reformulating the request in a manner that will meet the requirements of this section.

(2) Both the envelope and the written request should be clearly marked "Freedom of Information Act Request." Each request shall include:

(i) The name and address of the person filing the request, and the telephone number, if any, at which the requester can be reached during normal business hours;

(ii) The title of any case in litigation to which the request relates, the court, and the nature of the case;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational institution, noncommercial scientific institution, or news media representative, employing the definitions in § 1502.10(a);

(iv) A statement indicating the requester's wish to have a copy of a record; or a statement that the re-

quester wishes to inspect a record before copying; and

(v) A statement agreeing to pay applicable fees or a fee waiver request that complies with § 1502.10.

(c) *Returned requests.* The Board need not accept or process a request that is not a request for identifiable records, does not comply with the requirements of paragraphs (a) and (b) of this section, or can be complied with only by designing an information retrieval system. The Board may return such a request, specifying the defects, and the requester may submit a corrected request, which shall be treated as a new request. If a request would require the generation of new documents or files or the creation or editing of a database, it will be returned as a request for which there are no responsive Board records.

(d) *Oral requests.* The Board may honor an oral request for Board records, but if the requester is dissatisfied with the Board's response and wishes to obtain further consideration, the requester must submit a written request, which shall be treated as an initial request.

(e) *Advance payment of fees.* Whenever the Board requires payment of any fee pursuant to § 1502.10(h) (1) or (2), the requester shall promptly remit the required payment to the Board as a condition to further processing of the request.

(f) *Date of receipt.* A request shall be considered as received for the purposes of this part when:

(1) A request that satisfies the requirements of paragraphs (a) and (b) of this section is received by the Office of Public Affairs; and

(2) If payment has been required under paragraph (e) of this section, payment is received from the requester.

§ 1502.7 Responses to requests.

(a) *Authority to grant or deny requests.* The Director is authorized to grant or deny any request for a Board record and to act for the Board under this section.

(b) *Determination.* Pursuant to 5 U.S.C. 552(a)(6)(A)(i), the Director's determination whether or not to comply with a request shall be made within ten days (excluding Saturdays, Sundays,

and legal public holidays) after the date of receipt of the request unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(c) *Notice of determination.* The Director shall immediately notify the requester in writing of the determination whether or not the Board will comply with a request. If a request is granted in whole or in part, the notice shall describe the manner in which a record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place, and any fees to be charged in accordance with § 1502.10. If a request is denied in whole or in part, the notice shall include a brief statement of the reason or reasons for the denial, including the exemption or exemptions relied upon, and inform the requester of the requester's right to appeal to the Board pursuant to § 1502.9.

(d) *Referrals.* To the extent that a request is for records that were created by or obtained from the RTC or another agency, the Board may refer the request to the RTC or such other agency for determination and a direct response to the requester. The Board shall promptly give written notice of such referral to the requester.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified or that may be eligible for classification by another agency under the provisions of an Executive Order concerning the classification of records, the Board shall refer the responsibility for responding to the request to the agency that classified the information or should consider classifying the information.

(f) *Unlocated or destroyed records.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Director shall notify the requester in writing.

§ 1502.8 Business information.

(a) *General.* Business information provided to the Board by a submitter shall not be disclosed pursuant to a Freedom

of Information Act request except in accordance with this section. The President, the Director, or such other officer as the Board may designate, with the advice of the General Counsel to the Board, may act for the Board under this section.

(b) *Submission and request for confidential treatment.* (1) Any submitter of information to the Board who desires that it be afforded confidential treatment pursuant to 5 U.S.C. 552(b)(4) shall file an application for confidential treatment with the Board at the time the information is submitted or within a reasonable time thereafter.

(2) Each application for confidential treatment shall state in reasonable detail the facts and arguments supporting the application and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(3) The submitter should clearly designate as "Confidential" all material for which confidential treatment is desired and separate it from other information in the submission.

(4) Applications for confidential treatment of any documents shall be considered in connection with a request for access to the documents. At their discretion, the Board, the President, or the Director may approve or disapprove an application for confidential treatment prior to a request for access to the documents.

(c) *Notice to submitters.* Except as provided in paragraph (h) of this section and to the extent permitted by law, the Board shall give prompt written notice to a submitter of a request or appeal encompassing business information provided to the Board by the submitter if:

(1) The submitter has designated the information as confidential pursuant to paragraph (b) of this section within ten years prior to the date of the request; or

(2) The Board has reason to believe that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Opportunity to object.* Through the notice described in paragraph (c) of this section, the Board shall afford the submitter or its designee a reasonable period of time within which to object to disclosure and state grounds for such objection. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the statement should be supported by a certification by the submitter or an authorized representative of the submitter that the information has been treated as confidential by the submitter and has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice to requester.* At the same time that the Board notifies the submitter, the Board shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(f) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and grounds for nondisclosure prior to deciding whether to disclose business information. If the Board decides to disclose business information over the objection of a submitter, the Board shall forward to the submitter a written notice, which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified disclosure date, and a copy of the notice shall be forwarded to the requester at the same time.

(g) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the

Board shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Board shall provide the submitter with written notice of any final administrative decision to disclose information within a reasonable number of days prior to a specified disclosure date.

§ 1502.9 Appeals.

(a) *Appeal to the Board.* When a request or a fee waiver request has been denied in whole or in part, the Board fails to respond to a request within the time limits set forth in the Freedom of Information Act, or the Board responds that records have not been found and the requester deems such response to be an adverse action, the requester may appeal such action to the Board within thirty days of receipt of the notice of denial or response. An appeal to the Board shall be made in writing and shall be addressed to the President, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Both the envelope and the letter of appeal itself should be clearly marked "Freedom of Information Act Appeal."

(b) *Untimely appeals.* The Board may consider an untimely appeal if:

(1) It is accompanied by a written request for leave to file an untimely appeal; and

(2) The President determines, within the President's discretion and for good and substantial cause shown, that the appeal should be considered.

(c) *Action on appeals.* The President or such other officer as the Board may designate, with the advice of the General Counsel, shall act on behalf of the Board on appeals under this section, but no officer who has denied a request or application for a waiver or reduction

in fees shall act on the appeal from that denial. The Board shall make a determination with respect to an appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing and shall constitute final Board action on the request and appeal. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified, and the request shall be processed promptly in accordance with the decision on appeal.

§ 1502.10 Fees.

(a) *Definitions.* For the purposes of this section:

(1) *Commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or a person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a requester properly belongs in this category, the Board must determine the use to which a requester will put the documents requested. If the Board has reasonable cause to doubt the stated use, or if that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request. Direct costs include, for example, the salary of an employee perform-

ing work to respond to a request (the basic rate of pay for the employee plus a factor of 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as the costs of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. A copy shall be in a form that is reasonably usable by a requester.

(4) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(5) *Fee waiver request* means a request for the waiver or reduction of a fee charged for processing a request.

(6) *News* means information that is about current events or that would be of current interest to the public.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of news, who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid

basis for expecting publication through the organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(9) *Request* means a request for records pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(10) *Requester* means a person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(11) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document may be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to excise portions and otherwise prepare the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is separate from review.

(b) *General.* (1) The Board's fees for the processing of requests shall recover the direct costs of search, duplication, or review in accordance with the following:

(i) Fees for the processing of requests shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use.

(ii) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media.

(iii) Fees for other requesters shall be limited to reasonable standard charges for document search and duplication.

(iv) No fee shall be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(v) Fees shall be assessed according to the schedule in paragraph (c) of this section; and all fees so assessed shall be charged to the requester except to the extent that the charging of fees is limited under paragraph (d) of this section or unless a waiver or reduction of fees is granted under paragraph (e) of this section.

(vi) Requests from record subjects for records about themselves, which are filed in Board systems of records, will be charged under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a), which permit fees only for reproduction or duplication of records, subject to the limitation in paragraph (d)(1) of this section.

(2) Except as otherwise specifically provided, the Director is authorized to act for the Board under this section.

(c) *Assessment of fees.* In responding to requests, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section. The Board may assess fees for time spent searching even if records cannot be located or if records located are subsequently determined to be entirely exempt from disclosure.

(ii) The fee assessed for other than computer searches shall be \$3.25 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. If a search and retrieval requires the use of professional or managerial personnel, the fee assessed for other than computer searches shall be \$7.00 for each quarter hour spent by such professional or managerial personnel.

(iii) For computer searches that may be undertaken through the use of existing programming, the requester shall be assessed the actual direct costs of the search. This shall include the cost of operating a processing unit for that portion of operating time that is directly attributable to searching for records responsive to the request as

well as the costs of operator/programmer salary apportionable to the search. The Board is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee shall be \$0.10 per page. For copies produced by computer, such as tapes or printouts, a requester shall be charged the actual direct costs of such copy, including operator time. For other methods of duplication, requesters shall be charged the actual direct costs of duplicating a record.

(3) *Review.* (i) Commercial use requesters shall be assessed for review at the initial administrative processing level at the rates set forth in paragraph (c)(1)(ii) of this section.

(ii) No charge shall be assessed for review at the administrative appeal level of an exemption already applied. Records or portions of records withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again, however, to determine the applicability of exemptions not previously considered. The costs of such a subsequent review are assessable at the rates set forth in paragraph (c)(1)(ii) of this section.

(4) *Other services.* Applications for other services and materials that are not required by or subject to the Freedom of Information Act are chargeable at the actual cost to the Board. These include, but are not limited to:

(i) Certifying that records are true copies; and

(ii) Sending records to the requester by special methods such as express mail or messenger.

(5) *Use of private contractors.* The Board, not acting by delegated authority, may authorize contracting with private sector contractors for the services of locating, reproducing, and disseminating records in response to requests if the Board determines that such functions may be performed more efficiently and for less cost through private sector contractors. In such case, a requester shall be charged the actual costs to the Board for the services furnished with respect to the re-

quest, provided, however, that in no event shall the requester be charged more than what the Board would have charged if it had performed such services itself.

(d) *Limitations on charging fees.* Except for requesters seeking records for a commercial use, as defined in paragraph (a)(1) of this section, the Board shall provide without charge:

(1) The first 100 pages of duplication, or its cost equivalent; and

(2) The first two hours of search, or its cost equivalent.

(e) *Waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the Board determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Board, that:

(i) Disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure is not primarily in the commercial interest of the requester.

(2) In order to determine whether the requirement set forth in paragraph (e)(1)(i) of this section is met, the Board shall consider the following four factors in sequence:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) In order to determine whether the requirement set forth in paragraph (e)(1)(ii) of this section is met, the Board shall consider the following two factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(ii) Whether the magnitude of an identified commercial interest of the

requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) If only a portion of the requested records satisfies the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a waiver or reduction shall be granted only as to that portion.

(5) Fee waiver requests shall be considered on a case-by-case basis. A fee waiver request shall address each of the factors listed in paragraphs (e) (2) and (3) of this section as they apply to each request for records.

(6) Normally no charge shall be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(7) In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived if the total charges (including charges for information provided under the Privacy Act of 1974) are \$50 or less; but the Board, in its discretion, may waive fees in excess of that amount.

(8) Appeals from denials of fee waiver requests shall be decided in accordance with §1509.2(a) and the criteria set forth in paragraph (e)(1) of this section by an official authorized to decide appeals from denials of requests for records. Such appeals shall be addressed in writing to the Board within thirty days after receipt of a denial of a fee waiver request; both the envelope and the letter of appeal itself should be clearly marked "Fee Waiver Request Appeal."

(f) *Notice of anticipated fees in excess of \$25.00.* If the board determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, the Board shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has agreed in advance to pay fees as high as those anticipated. If a requester is notified that actual or estimated fees may exceed \$25.00, the request shall be deemed not to have been received until the requester has agreed to pay the antici-

pated total fee. A notice to the requester pursuant to this paragraph (f) shall offer the opportunity to confer with Board staff for the purpose of reformulating the request to meet the requester's needs at a lower cost.

(g) *Aggregating requests.* If the Board reasonably believes that a requester or group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests for clearly related documents made within a thirty day period have been made in order to evade fees. Multiple requests for unrelated documents will not be aggregated.

(h) *Advance payments.* (1) If the Board estimates that a total fee to be assessed under this section is likely to exceed \$250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If a requester has previously failed to pay a records access fee within thirty days of the date of billing, the Board may require the requester to pay the full amount owed, plus any applicable interest, as provided for in paragraph (i) of this section, and to make an advance payment of the full amount of any estimated fee before the Board begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h)(1) and (2) of this section, the Board shall not require the requester to make an advance payment. Payment owed for work already completed is not an advance payment.

(4) If the Board requires a payment under paragraph (h)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) for the processing of an initial request or an appeal, and the permissible extensions of such limits, shall be deemed not to

begin to run until the Board has received payment of the assessed fee.

(i) *Form of payment.* Payment of fees shall be made by check or money order payable to the Treasurer of the United States. The payment shall be forwarded to the Board.

(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records.

§ 1502.11 Exemptions.

(a) *General.* Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552 and this part do not apply to certain matters which are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Board, including, but not limited to, records of deliberations of the Board other than meetings held pursuant to 12 U.S.C. 1441a(a)(10);

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished only by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Other law enforcement records.* The Board may also withhold disclosure of records pursuant to 5 U.S.C. 552(c).

(c) *Segregable portions of record.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Reasonably segregable nonexempt portions of a record are those:

(1) Whose meaning is not distorted by deletion;

(2) That are sufficient to be intelligible and useful to the requester; and

(3) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(d) *Computer information.* Information stored in a computer that can be segregated only by creating an information retrieval program is not considered reasonably segregable.

§ 1502.12 Preservation of records.

The Board shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Freedom of Information Act.

PART 1503—PRIVACY ACT PROCEDURES

Sec.

- 1503.1 Purpose and scope.
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AUTHORITY: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

SOURCE: 57 FR 61252, Dec. 24, 1992, unless otherwise noted.

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to